

Approved March 1, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~a.m.~~ p.m. on February 16, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson, Solbach and Vancrum, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

BILL REQUESTS:

The Trust Division of the Kansas Bankers Association requested the Committee introduce three bills dealing with wills, see Attachments I, II and III.

Representative Walker moved and Representative Jenkins seconded to introduce the bills requested by the Kansas Bankers Association as Committee bills. The motion passed.

The Chairman announced the Register of Deeds of Marshall County requested the Committee introduce a bill addressing the dormancy of first filings at Register of Deeds offices.

Representative Jenkins moved to introduce the bill requested as a Committee bill. Representative Lawrence seconded the motion. The motion passed.

CONSIDERATION OF BILLS:

H.B. 2120 - Penalties for violation of provisions of Article 5 of Chapter 65 of Kansas Statutes Annotated regulating children's homes

Representative Walker moved and Representative Jenkins seconded to recommend H.B. 2120 favorably for passage, and that it be placed on the consent calendar. The motion passed.

H.B. 2059 - Criminal prosecution, statute of limitation, 5 years.

Representative Roy moved to report H.B. 2059 adversely. Representative Adam seconded the motion. The motion was withdrawn.

Representative Buehler moved to table H.B. 2059. Representative Hochhauser seconded the motion. The motion passed.

H.B. 2070 - Consumer protection, actions brought by Attorney General, attorney fees

Representative Shriver moved conceptually that the attorney fees recovered by the Attorney General be deposited in the State General Fund and the attorney fees recovered by the District Attorney or County Attorney be deposited in the County General Fund, and to strike Section 4. Representative Jenkins seconded the motion. The motion passed.

Representative Jenkins moved to recommend H.B. 2070, as amended, favorably for passage. Representative Walker seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 519-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 16, 1989

H.B. 2091 - Indecent liberties with a child, elements, affirmative defense

Representative Shriver moved and Representative Sebelius seconded to report H.B. 2091 adversely.

Representative Snowbarger moved and Representative Fuller seconded to table H.B. 2091. The motion passed.

H.B. 2067 - Criminal inquisitions

Representative Walker moved and Representative Sebelius seconded to table H.B. 2067. The motion passed.

H.B. 2113 - Health Care Risk Management

A motion was made by Representative Fuller and seconded by Representative Jenkins to report H.B. 2113 adversely. The motion failed.

A motion was made by Representative Shriver and seconded by Representative Sebelius to table H.B. 2113. The motion passed.

The Chairman appointed Representatives Jenkins, Walker and Shriver as a subcommittee to study the proposed amendments to H.B. 2113.

H.B. 2112 - Probate clean-up

Representative Scott moved to change the allowances on page 1 from \$1,500 to \$2,500 and \$15,000 to \$25,000. Representative Whiteman seconded the motion. The motion was withdrawn.

Representative Scott moved to leave the minimum at \$1,500 and the raise the top to \$25,000. Representative Whiteman seconded the motion. The motion passed.

A motion was made by Representative Shriver to adopt the amendment proposed by the Kansas Bar Association on page 2, Section 2,"(b) The personal representative of a decedent's estate shall give actual notice to all known creditors reasonably ascertainable by the personal representative prior to the expiration of the non-claim period". The motion was seconded and passed.

Representative Snowbarger moved to report H.B. 2112, as amended, favorably for passage. The motion was seconded by Representative Jenkins. The motion passed.

The Committee adjourned at 4:45 p.m.

Section 1. A trust instrument which establishes an intervivos trust and which directs the trustee to distribute trust assets upon the death of the settlor may refer to a separate written statement or list of items of personal property, other than money, evidences of debt, documents of title, securities, and properties used in trade or business, which are assets of the trust estate, and may direct the trustee to make distribution of such items as indicated in the written statement or list. The trustee may distribute such items upon death of the settlor in accordance with the written statement or list. Such written statement or list either must be in the handwriting of the settlor or be signed by the settlor, and must describe the items with reasonable certainty. The writing may be referred to in the trust instrument as one to be in existence at the time of the settlor's death, it may be prepared before or after execution of the trust instrument, and it may be altered by the settlor after its preparation. Transfer of items of personal property pursuant to this section shall not be considered testamentary or be invalidated due to nonconformity with the provisions of chapter 59 of the Kansas Statutes Annotated.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

House Judiciary
2/16/89
Attachment I

Section 1. K.S.A. 59-3004 is hereby amended to read as follows: 59-3004. Any natural guardian, by last will, may nominate a conservator of only that portion of the estate of such guardian's minor children, whether born at the time of making the will or afterwards, which is devised or bequeathed by such natural guardian. A surviving natural guardian, by last will or by a trust instrument establishing an intervivos trust, may nominate a guardian or conservator, or both, for any of such guardian's minor children, whether born at the time of making the will or afterwards. The guardian or conservator, so nominated, if a fit and proper person, shall be appointed by the district court if it is found, during the hearing held pursuant to K.S.A. 59-3013, and amendments thereto, that a guardian or conservator, or both, should be appointed for the minor children of the testator or settlor.

Sec. 2. K.S.A. 59-3014 is hereby amended to read as follows: 59-3014. (a) Subject to K.S.A. 59-3004 and amendments thereto, the court in appointing a suitable guardian or conservator shall give priority in the following order:...

(d) Upon the filing of an oath according to law,...If the guardian or conservator appointed is the one named by a testator or settlor under the provisions of K.S.A. 59-3004 and amendments thereto and the testator or settlor has provided by will or in the trust instrument that no bond be required of such guardian or conservator, then no bond shall be required, unless the court shall otherwise direct....

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Attachment II

Sec. 3. K.S.A. 59-3004 and 59-3014 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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Section 1. K.S.A. 59-103 is hereby amended to read as follows:
59-103. (a) Chapter 59 of the Kansas Statutes Annotated may be used:

(1) To admit last wills and testaments to probate.

(2) To grant and revoke letters testamentary and of administration...

(10) To construe and interpret trusts created by written instruments other than by wills. Such proceedings shall be conducted pursuant to articles 22 and 24 of chapter 59 of the Kansas Statutes Annotated to the extent such articles are applicable, and be probate proceedings for such purposes.

(b) Every petition to commence...

Sec. 2. K.S.A. 59-212 is hereby amended to read as follows:
59-212. The following shall be kept by the court for proceedings under chapter 59 of the Kansas Statutes Annotated:

(1) An appearance docket, in which shall be listed under the name of the decedent, ward, conservatee, mentally ill person, settlor of the trust, or other person involved, all documents pertaining thereto and in the order filed,...

(2) A suitable general index, in which files pertaining to estates of decedents shall be indexed under the name of the decedent, those pertaining to guardianships under the name of the ward, those pertaining to conservatorships under the name of the conservatee, those pertaining to mentally ill persons under the name of such person, those pertaining to adoption of children under both the name and adopted name of the child, and those

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Attachment III

relating to trusts created by written instruments other than by wills under the name of the settlor of the trust. After the name of each file shall be shown the file number,...

Sec. 3. K.S.A. 59-2203 is hereby amended to read as follows: 59-2203. Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of his or her death; if the decedent was not a resident of this state, proceedings may be had in any county wherein said decedent left any estate to be administered as provided in K.S.A. 59-805. Proceedings to construe trusts created by written instruments other than by wills shall be had in the county where the settlor resides or resided at the time of his or her death or where the trustee resides or is located. Proceedings for the appointment of a guardian may be had...

Sec. 4. K.S.A. 59-2210 is hereby amended to read as follows: 59-2210. Notice of any hearing, if such is required, shall be in substantially the following form:

State of Kansas, _____ County, ss. In the district court of said county and state. In the matter of the estate of (name of decedent or person under disability, or settlor of the trust, with a specific designation which it is)....

Sec. 5. K.S.A. 59-2214 is hereby amended to read as follows: 59-2214. In all probate proceedings relating to a decedent or conservatee or to construe and interpret trusts created by written instruments other than by wills, the court shall tax the costs thereof against the estate unless otherwise provided by this act,...

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Sec. 6. K.S.A. 1988 Supp. 59-2401 is hereby amended to read as follows: 59-2401. (a) An appeal may be taken within 30 days from the date of entry of any of the following orders, judgment, decrees and decisions:

(1) An order admitting or refusing to admit a will to probate....

(24) A final order, decision or judgment in any probate proceeding.

(25) A final order construing a trust created by written instrument other than by will.

Sec. 7. K.S.A. 1988 Supp. 59-2402a is hereby amended to read as follows: 59-2402a. When a petition is filed in the district court and a district magistrate judge is assigned to hear such petition, any interested party may request the transfer of the matter to the administrative judge for assignment to a district judge if the petition is:

(1) To admit a will to probate;...

(11) For the construction and interpretation of a trust created by written instrument other than by will.

When a request for such transfer is filed less than three days prior to the commencement of a hearing,...

New Sec. 8. A petition to construe a trust created by written instrument other than by will shall state: (1) the name, residence and address of the trustee and of each known beneficiary, other than the petitioner, and (2) the name, residence and address of the settlor, other than the petitioner.

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Any interested person may petition the court to construe and interpret such trusts.

Sec. 9. K.S.A. 59-103, 59-212, 59-2203, 59-2210, 59-2214, and K.S.A. 1988 Supp. 59-2401 and 59-2402a are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

D.J. 2/16/89
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